

The opinion in support of the decision being entered
today was not written for publication and
is not binding precedent of the Board.

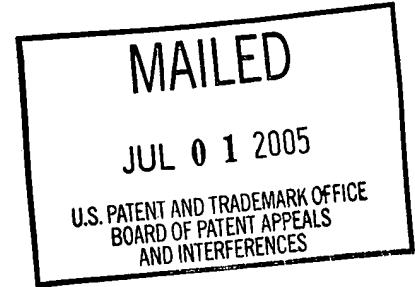
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CARTER F. LLOYD

Appeal No. 2005-1385
Application No. 10/034,119

ON BRIEF



Before KIMLIN, PAK and OWENS, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 49-60,
all the claims remaining in the present application.

Claim 49 is illustrative:

49. An apparatus for gripping and removing a shingle
fixed to a support comprising:

an upper gripping member defining a substantially
flat first gripping surface;

a lower gripping member defining a substantially
flat second gripping surface;

a gripping mechanism connecting the upper and lower gripping members to one another, the gripping mechanism being configured for urging the gripping members toward one another for gripping the shingle therebetween; and

an impact transmitting member connected to the gripping mechanism, the impact transmitting member being configured for transmitting an impact to both the upper and lower gripping members for removing the shingle from the support when the shingle is gripped between the upper and lower gripping members; wherein:

the first and second gripping surfaces are configured and disposed relative to one another such that, when the apparatus grips the shingle, each of the first and second gripping surfaces applies a force evenly distributed along an entire width thereof.

The examiner relies upon the following references as evidence of obviousness:

Verna	4,386,542	Jun. 07, 1983
Small	4,669,341	Jun. 02, 1987
Wang	5,964,130	Oct. 12, 1999

Appellant's claimed invention is directed to an apparatus and method for removing shingles from a substrate. The apparatus is a plier-like device with upper and lower gripping members that have a substantially flat surface. The tool also comprises an impact transmitting member, such as an anvil, for applying a force to both the upper and lower gripping members during removal of a shingle. According to appellant, "[u]se of the shingle

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remover according to embodiments of the present invention advantageously results in the removal of a shingle from its support without disturbing or damaging any of the surrounding shingles" (Page 3 of principal brief, first paragraph).

Appealed claims 49-55 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Small in view of Verna. Claims 56-60 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the stated combination of references further in view of Wang.

In accordance of the grouping of claims set forth at page 8 of appellant's principal brief, claims 49-59 stand or fall together, whereas claim 60 is argued separately.

We have thoroughly reviewed each of appellant's arguments for patentability. However, we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejections for essentially those reasons expressed in the answer, and we add the following primarily for emphasis.

There is apparently no dispute that Small, like appellant, discloses an apparatus for gripping and removing material comprising upper and lower gripping members connected by a gripping mechanism which, in turn, is connected to an impact transmitting member. As recognized by the examiner, the jaws of Small do not define a substantially flat surface that applies and evenly distributes force along its entire width. However, as explained by the examiner, Verna teaches that the gripping surfaces of such jaws can be substantially flat for gripping a flat material. Accordingly, we agree with the examiner that it would have been obvious for one of ordinary skill in the art to employ substantially flat gripping surfaces on the upper and lower jaws of Small for gripping and removing substantially flat material. We find no error in the examiner's reasoning that "when the workpiece shape is that of a substantially flat surface, one skilled in the art would be lead by Verna to construct the gripping surfaces of each jaw to match that of the workpiece" (Page 4 of answer, second paragraph, last sentence). We agree with the examiner that the collective teachings of Small and Verna would have provided the requisite motivation from the

logic that "if the shape of the workpiece is substantially flat, then the shape of the jaw gripping surface should also be substantially flat in order to provide a [sic, an] even amount of pulling force across the entire jaw gripping surface" (Page 5 of answer, second paragraph). We do not subscribe to appellant's argument that the combination of references "can only be made with impermissible hindsight consideration of Appellants [sic, Appellant's] disclosure" (Page 2 of reply brief, third paragraph). We also reject appellant's reasoning that since Small and Verna are primarily directed to removing pins from flywheels and for working with the sheet metal of automobiles, respectively, one of ordinary skill in the art would not have found it obvious to modify the design of Small's tool for removing different materials. Manifestly, it is notoriously well known to use lock-grip pliers for a myriad of applications.

As for separately argued claim 60 which defines the upper plate as pivotally attached to the upper jaw, we concur with the examiner that Wang evidences the obviousness of pivotally attaching the upper plate of Small to the upper jaw.

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As a final point, we note that appellant bases no arguments upon objective evidence of nonobviousness such as unexpected results, which would serve to rebut the prima facie case of obviousness established by the examiner.

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

Edward C. Kimlin
EDWARD C. KIMLIN)
Administrative Patent Judge)

Chung K. Pak)
CHUNG K. PAK)
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BOARD OF PATENT
APPEALS AND
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